



# Town of Brookline Massachusetts

## BOARD OF APPEALS

Jesse Geller, Chairman  
Mark G. Zuroff  
Christopher Hussey

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Patrick J. Ward, Clerk

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TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2018-0075  
JONATHAN & JULIE BEDARD  
154 RESERVOIR ROAD, BROOKLINE,  
MA

Petitioners, Jonathan and Julie Bedard, applied to the Building Commissioner for permission to renovate the existing home and construct two small additions. The application was denied and an appeal was taken to this Board.

The Board administratively determined that the properties affected were those shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed December 20, 2018 at 7:05 PM., in the Selectmen's Hearing Room as the date, time and place of a hearing for the appeal. Notice of the hearing was mailed to the Petitioners, to their attorney (if any) of record, to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published on December 6, 2018 and December 13, 2018 in the Brookline Tab, a newspaper published in Brookline. A copy of said notice is as follows:

### Notice of Hearing

Pursuant to M.G.L., C. 40A, the Board of Appeals will conduct a public hearing at Town Hall, 333 Washington Street, Brookline, on a proposal at:

**154 RESERVOIR ROAD, BROOKLINE, MA 02467 - FAR relief for a renovation of an existing single-family home in a(n) S-15 SINGLE-FAMILY on December 20<sup>th</sup>, 2018 at 7:00 pm in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: Mathew Roth)  
*Precinct 13***

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law, and any additional zoning relief the Board deems necessary:

**§5.10 – MINIMUM LOT SIZE**

**§5.20 – FLOOR AREA RATIO**

**§8.02 – ALTERATION AND EXTENSION**

**Any additional relief the Board may find necessary.**

*Hearings may be continued by the Chair to a date/time certain, with no further notice to abutters or in the TAB. Questions about hearing schedules may be directed to the Planning and Community Development Department at 617-730-2130, or by checking the Town meeting calendar at: [www.brooklinema.gov](http://www.brooklinema.gov).*

*The Town of Brookline does not discriminate in its programs or activities on the basis of disability or handicap or any other characteristic protected under applicable federal, state or local law. Individuals who are in need of auxiliary aids for effective communication in Town programs or activities may make their needs known by contacting the Town's ADA Compliance Officer. Assistive Listening Devices are available at the Public Safety Building for public use at Town of Brookline meetings and events. Those who need effective communication services should dial 711 and ask the operator to dial the Town's ADA Compliance Officer.*

*If you have any questions regarding this Notice or the Assistive Listening Device, please contact Caitlin Haynes at 617-730-2345 or at [chaynes@brooklinema.gov](mailto:chaynes@brooklinema.gov).*

*Jesse Geller, Chair  
Christopher Hussey  
Mark G. Zuroff*

**Publish: 12/6/18 & 12/13/18**

**Hearing & Testimony**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Acting Chair Mark G. Zuroff and Board Members Kate Poverman and Steve Chiumenti. Also present at the hearing were Zoning Planner & Coordinator, Mackenzie Leahy, and Assistant Director of Regulatory Planning, Polly Selkoe.

The case was presented by Robert L. Allen, Jr., Law Office of Robert L. Allen Jr., LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445. Also present at the hearing were the Applicants, Jonathan & Julie Bedard.

Chairman Zuroff called the hearing to order at 7:15 p.m. Attorney Allen waived the reading of the public notice.

Mr. Allen then provided an overview of the property and the requested relief. The Applicants propose to construct two additions at the rear of the home and to convert an existing enclosed porch and second story deck to habitable space, which would increase the gross floor area by a total of 405 square feet. Attorney Allen explained that the additions would create a new space in the kitchen, a new pantry, and add space in the living room, also converting the existing screened porch to habitable space.

Attorney Allen noted that Preservation found the home to significant and imposed an 18 month stay in December 2017, as this is a National Register Eligible property, which was lifted by the Commission at the July 2018 hearing based on these plans. Furthermore, Attorney Allen noted that Applicants have the support of seven neighbors, including abutters to the left, the right, and directly across the street, and the Planning Board unanimously recommended approving these plans.

The existing home is nonconforming as it relates to the allowed Floor Area Ratio ("FAR") and minimum lot size within the S-15 Zoning District. The current FAR is at 0.30 (120% of what is allowed), where the Bylaw maximum is 0.25. The proposed addition will increase the existing nonconforming FAR from 0.30 to 0.34 (136% of what is allowed). The existing lot size is 10,479 square feet, where the Bylaw minimum is 15,000 square feet.

Whereas this building is nonconforming, the Board may grant a special permit for the proposed relief under G.L. Chapter 40A § 6, so long as the Board finds that, "such change, extension, alteration shall not be substantially more detrimental than the existing nonconforming use [or structure] to the neighborhood," and that there will be no creation of any new nonconformities. The home was built in 1935—prior to The Zoning Enabling Act of 1954, the subsequent Zoning Act of 1975, and the existing section of the Zoning Bylaw for the Town of Brookline which provides a maximum FAR of 0.25 and minimum lot size of 15,000 square feet for the S-15 Zoning District.

Attorney Allen stated that he believed the requirements for a special permit under Chapter 40A § 6 had been met and although not required, the Applicants have proved this by meeting the

standards under **Section 9.05** of the Zoning By-Law in order to allow the relief from **Section 5.10** for minimum lot size **Section 5.20** for Floor Area Ratio, and from **Section 8.02.2** to allow for the change, extension, or alteration of a nonconforming use or structure.

Attorney Allen outlined the standards under **Section 9.05** of the Zoning Bylaw: The location is appropriate for the proposed additional square footage to the home, which will continue to be used as a single-family dwelling, consistent with other homes in the neighborhood and the additions are at the rear of the home complying with setback requirements; The use will not adversely affect the neighborhood because the additions are at the rear of the home and many of the surrounding homes are non-conforming to the maximum allowed floor area ratio and minimum lot size required in the S-15 District; There will be no nuisance or serious hazard to vehicles or pedestrians because the property’s on-site circulation will not change; Adequate and appropriate facilities will be provided for the proper operation of a single-family dwelling; and there will be no effect on the supply on housing available for low and moderate income people; and argued that these standards had been met through his testimony.

**Public Comments**

Chairman Zuroff then asked whether anyone was present to speak in favor of the proposal. No one spoke in favor of the proposal.

Chairman Zuroff then asked whether anyone was present to speak in opposition to the proposal. No one spoke in opposition to the proposal.

**Planning Board Review, Comments, & Recommendations**

Chairman Zuroff then called upon Mackenzie Leahy, Zoning Planner & Coordinator, to deliver the findings of the Planning Board. Ms. Leahy noted the following:

**Section 5.10 – Minimum Lot Size**

	Allowed/Required	Existing	Proposed	Finding
Lot Size	15,000	10,479	n/a	Special Permit*/ Variance

<b>Floor Area Ratio (% of allowed)</b>	.25 (100%)	.30 (120%)	.34 (136%)	Special Permit*/ Variance
<b>Floor Area (s.f.)</b>	2,620	3,143	3,548	

**Section 5.20 – Floor Area Ratio**

*\*Under Deadrick, the Board of Appeals may allow an extension of an existing non-conformity if it finds there is no substantial detriment to the neighborhood.*

**Section 8.02.2 – Alteration or Extension**

A special permit is required to alter this non-conforming structure.

The Planning Board had no objections to this proposal. They found the proposed additions to be reasonable and keeping with the character of the existing home.

**Therefore, the Planning Board recommends approval of the site plan by John R. Hamel dated 11/29/18 and the floor plans and elevations by Slocum Hall Design Group dated 6/27/2018 subject to the following conditions:**

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, floor plans and elevations subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: a) a final site plan stamped and signed by a registered engineer or land surveyor; b) final floor plans and elevations stamped and signed by a registered architect or engineer; and c) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

**Building Commissioner Review, Comments, & Recommendations**

Chairman Zuroff then called upon Polly Selkoe to deliver the comments of the Building Department. Ms. Selkoe stated that the Building Department has no opposition to this request and, should relief be granted, the Building Department will work with the Applicants to ensure compliance with the Building Code.

### Findings

In making its findings and reaching the decision described herein, the Board is guided by G.L. c. 40A, as amended, and by the Brookline Zoning Bylaw. The Board also considered evidence and testimony presented at the public hearings and comments submitted by Town departments, boards and committees as well as residents placed in the public record during the course of the hearings.

During deliberation Chairman Zuroff stated that he saw fit to approve the proposal. Board Members Poverman and Chiumenti agreed.

In reliance on the above referenced plans, the Board then determined, by unanimous vote that the requirements for a special permit from Section 5.10 and Section 5.20 per M.G.L. Chapter 40A Section 6 and from Section 8.02.2 pursuant to Section 9.05 of the Zoning By-Law, respectively, were met, finding specifically under said Section 9.05:

- a. The specific site is an appropriate location for such a use, structure, or condition because the home will continue to be used as a single-family dwelling and the additions are at the rear of the home complying with setback requirements.
- b. The use as developed will not adversely affect the neighborhood because the additional gross floor area is consistent with homes in the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians because the property's on-site circulation will not change.
- d. Adequate and appropriate facilities will be provided for the proper operation of a single-family dwelling.
- e. Development will have no effect on the supply of housing available for low- and moderate-income people.

### Conditions of Approval

Based upon the findings of the Board and testimony and information received into the record during the public hearing process, the Board **GRANTS** to Julie and Jonathan Bedard, a **SPECIAL PERMIT**, in accordance with G.L. Chapter 40A § 6 and as confirmed by 85 Mass. App. Ct. 539 Deadrick vs. Zoning Board of Appeals of Chatham, and under Section(s) Section

8.02 for nonconforming alterations and extension, as it relates to Section 5.10 Minimum Lot Size and Section 5.20 Floor Area Ratio, to construct rear additions and existing enclosed porch and second floor deck to create habitable space, in the S-15 District, for the property located at 154 Reservoir Road (Assessor Parcel No. 64-278-30).

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, floor plans and elevations subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: a) a final site plan stamped and signed by a registered engineer or land surveyor; b) final floor plans and elevations stamped and signed by a registered architect or engineer; and c) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

This special permit approval is subject to all subsequent conditions that may be imposed by other Town departments, boards, agencies, or commissions. Any changes to the special permit that may be required by the decisions of other Town boards, agencies or commissions shall be submitted to the Board for review as a new application.

Any work or use that deviates from the approved special permits or this Decision shall be a violation of the *Brookline Zoning Bylaw*, unless the Applicant requests a new application or modification and such approval is provided in writing by the Board.

Upon receipt of a written request by the applicant filed at least thirty (30) days prior to the date of expiration, the Board may grant an extension for good cause. The request shall state the reasons for the extension and also the length of time requested. If no request for extension is filed and approved, the special permit shall lapse one year from the date of Decision, unless acted on or otherwise specified, and may be reestablished only after a new filing, hearing, and decision.

**Vote of the Board**

By a vote of 3 to 0, the Brookline Zoning Board of Appeals **GRANTS** to Julie and Jonathan Bedard, a **SPECIAL PERMIT**, in accordance with G.L. Chapter 40A § 6 and as confirmed by 85 Mass. App. Ct. 539 Deadrick vs. Zoning Board of Appeals of Chatham, and under Section(s) Section 8.02 for nonconforming alterations and extension, as it relates to Section 5.10 Minimum Lot Size and Section 5.20 Floor Area Ratio, to construct rear additions and existing enclosed porch and second floor deck to create habitable space, in the S-15 District, for the property located at 154 Reservoir Road (Assessor Parcel No. 64-278-30).

The Board and the Applicant have complied with all statutory requirements for the issuance of this Decision on the terms hereinafter set forth. A copy of this Decision will be filed with the Brookline Town Clerk and mailed to the Applicant, and notice will be mailed to all parties in interest as provided in G.L. c. 40A §15.

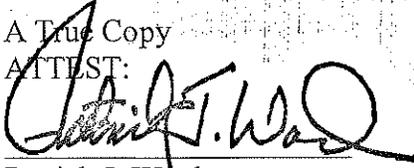
Any person aggrieved by the decision of the Board may appeal to the appropriate court pursuant to Massachusetts General Laws, Chapter 40A, §17, and shall be filed within twenty days (20) after the filing of this notice in the Office of the Brookline Town Clerk.

In accordance with MGL c. 40A, Section 9 and 11, the Variance or Special Permit granted by this Decision shall not take effect until a copy of the Decision is recorded in the Norfolk County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title, bearing the certification of the Town Clerk that twenty days have elapsed after the Decision has been filed in the Office of the Town Clerk and no appeal has been filed within said twenty day period or that any duly filed appeal has been dismissed or denied. The fee for recording or registering shall be paid by the Applicant. A copy of the recorded Decision certified by the Registry, and notification by the Applicant of the recording, shall be furnished to the Board.

Unanimous Decision of  
The Board of Appeals

Filing Date: 01/11/19

  
Mark G. Zurloff, Chairman

A True Copy  
ATTEST:  
  
Patrick J. Ward  
Clerk, Board of Appeals